Testimony of
Sharon M. Dietrich
Community Legal Services, Inc.

Hearing Before the
U.S. Congress, House of Representatives,
Judiciary Committee, Subcommittee on
Crime, Terrorism & Homeland Security

April 26, 2007

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Chairman Scott and members of the Committee, thank you for this opportunity to testify on the subject of the growth of criminal background checks in employment. This subject is perhaps the least acknowledged significant employment problem hindering millions of Americans from supporting their families and themselves.

My name is Sharon Dietrich. I am the Managing Attorney for Employment and Public Benefits for Community Legal Services, Inc. (CLS), in Philadelphia, PA. CLS is the larger of the two legal services programs serving low income people with civil legal problems in Philadelphia; we are not funded by the Legal Services Corporation. CLS is among the few legal services programs in the country that have long-standing employment law practices, with ours dating to the early 1970s. We see about 1,000 new clients seeking employment law representation every year.

I have been practicing employment law at CLS for almost 20 years. When I began my career, criminal background checking simply was not an issue for CLS's clients. That began to change about a decade ago, when clients began presenting us with cases in which their criminal records acted as a barrier to employment. The number of persons with criminal record issues seeking employment representation by CLS has grown steadily ever since, increasing from 36 in 1999 to 293 in 2006. Meanwhile, the number of legal and policy issues associated with criminal records on which we have worked has exploded. Attachments A and B illustrate the types of individual representation and systemic advocacy in which CLS engages on behalf of people with criminal records facing employment barriers.

Today, I will speak about two significant problems faced in the employment context by people with criminal records: (1) employers failing to consider whether criminal records are job-related or render the workers unsuitable for employment; and (2) inaccurate and unfairly handled criminal records, especially when prepared by commercial background screeners. These problems implicate two federal laws of general applicability. Because employer policies rejecting persons with criminal records have a racially disparate impact, Title VII of the Civil Rights Act of 1964 requires that employers have a business necessity in order to justify such policies. Moreover, commercial background screeners are subject to the standards of the Fair Credit Reporting Act. Nevertheless, the application of these laws to criminal background screening is little known and less enforced.

I. Federal Law Must Require Employers to Eliminate Overbroad Bans on Employment of People with Criminal Records and to Instead Consider the Job-Relatedness of a Conviction

From representing hundreds of people with criminal records over the last decade, I can tell you that no criminal record is so minimal or so old that it will not present employment barriers for the person who has it. Many employers have hiring policies that absolutely bar the employment of people with criminal records. If the background check report does not say "no record," the person does not get the job. They do not apply any "suitability criteria" to evaluate whether a criminal record really indicates whether a job applicant is likely to be a potential threat or liability in the workplace.

No federal law specifically creates any limits to employers' decisions predicated on criminal records, and only four states comprehensively regulate the consideration of criminal records in public and private employment and occupational licensing.[1] As a result, the most important law restricting employer consideration of criminal records is Title VII of the Civil Rights Act of 1964,[2] the federal law prohibiting race discrimination in employment, even though criminal records are not its focus.

Title VII is applicable because racial minorities are much more likely than whites to have criminal records. Taken together, African-Americans (39%) and Hispanics (18%) comprised a majority of those who have ever served prison time.[3] Almost 17% of adult black males had ever served prison time, a rate twice that of Hispanic males (7.7%) and six times that of white males (2.6%).[4] Thus, employer policies that reject job applicants and employees with criminal records, while neutral on their face, have a racially disparate impact.

For decades, neutral policies that have a racially disparate impact have violated Title VII.[5] After disparate impact has been proved, Title VII requires the employer to demonstrate that the

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[1] Margaret Colgate Love, Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide (William S. Hein & Co., Inc. 2006) [hereinafter Relief from Collateral Consequences], at 64. The four states are Hawaii, New York, Pennsylvania and Wisconsin.

[2] 42 U.S.C. §2000e *et seq.* Title VII is enforced by the U.S. Equal Employment Opportunity Commission (the EEOC).

[3] Thomas P. Bonczar, Prevalence of Imprisonment in the U.S. Population, 1974-2001 (U.S. Dept. of Justice, Bureau of Justice Statistics Aug. 2003), at 5.

[4] Id.

[5] The disparate impact doctrine was adopted by the U.S. Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971).

policy is "consistent with business necessity."[6] A plaintiff can still prevail even if business necessity is demonstrated, if there is an alternative practice which the employer has not adopted.[7]

Almost as long as there has been disparate impact case law under Title VII, there have been decisions rejecting employer policies absolutely barring the employment of people with criminal records.[8] Until recently, the most notable decision concerning convictions was Green v. Missouri Pacific Railroad Co., 523 F.2d 1290 (8th Cir. 1975), on appeal after remand, 549 F.2d 1158 (8th Cir. 1977). The injunction in Green prohibited the automatic denial of employment based on a criminal conviction, but permitting the employer to consider convictions "so long as defendant takes into account the nature and gravity of the offense or offenses, the time that has passed since the conviction and/or completion of sentence, and the nature of the job for which the applicant has applied," Green, 549 F.2d at 1160.

In 1985, the EEOC, then chaired by Clarence Thomas, promulgated a policy codifying the three factors set forth in the Green injunction as the business necessity standard for the consideration of convictions. EEOC Compl. Man. § 604 App [hereinafter EEOC Policy Guidance on Convictions]. The three business necessity factors are:

(1) the nature and gravity of the offenses;

(2) the time that has passed since the conviction and/or the completion of the sentence; and

(3) the nature of the job.

The EEOC Policy Guidance on Convictions characterizes the first and third factors as bearing upon the job-relatedness of the conviction, and the second factor as covering the time frame involved. It also elaborated that the first factor "encompasses consideration of the circumstances of the offense(s) for which an individual was convicted as well as the number of offenses."

The most recent EEOC policy guidance on a related subject is "Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. (1982)" (Sept. 7, 1990) [hereinafter the EEOC

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6 42 U.S.C. §2000e-2(k)(1)(A)(i).

7 42 U.S.C. §2000e-2(k)(1)(A)(ii).

8 E.g. Green v. Missouri Pacific Railroad Co., 523 F.2d 1290 (8th Cir. 1975), on appeal after remand, 549 F.2d 1158 (8th Cir. 1977); Carter v. Gallagher, 452 F.2d 315, 326 (8th Cir.), cert. denied, 406 U.S. 950 (1972); Field v. Orkin, No. 00-5913, 2001 WL 34368768 (E.D. Pa. Oct. 30, 2001); Washam v. J.C. Penney Co., Inc., 519 F. Supp. 554, 561 (D. Del. 1981); Dozier v. Chupka, 395 F. Supp. 836, 842-43 (S. D. Ohio 1975).

Policy Guidance on Arrests], also contained in Section 604 of the EEOC Compliance Manual, Vol. II. The EEOC Policy Guidance on Arrests reaffirmed the three-pronged business necessity test of the EEOC Policy Guidance on Convictions. It also states that with respect to consideration of arrests, "a blanket exclusion of people with arrest records will almost never withstand scrutiny."

From the promulgation of EEOC's policies on criminal records until recently, there was little case law on this subject, notwithstanding the enormous expansion of criminal background checking by employers during that period. Nor has the EEOC taken leadership in prioritizing criminal record cases or in public education on the issue. In my experience, there is little employer knowledge of the EEOC's policies on criminal records. While the number of people with criminal records being rejected from jobs has increased exponentially, application and enforcement of Title VII standards in this context has been almost non-existent.

On March 19, 2007, the Court of Appeals for the Third Circuit rendered the first appellate decision on the application on Title VII to people with criminal records since Green. In El v. Southeastern Pennsylvania Transportation Authority, 479 F.3d 232 (3d. Cir. 2007), the court found that the plaintiff, who had a 47 year old murder conviction, had not as a factual matter rebutted the transportation authority's criminal record hiring policy for its paratransit subcontractors. Aside from its holding concerning the application of SEPTA's policy to Mr. El and the factual record in the case, the decision was very instructive for the crafting of criminal records policies that will pass muster under Title VII.

The Third Circuit thoroughly analyzed the history of Title VII's business necessity defense in disparate impact cases and determined that the standard that it had previously articulated – "that discriminatory hiring policies accurately but not perfectly distinguish between applicants' ability to perform successfully the job in question" – could be adapted to the context of criminal conviction policies.[9] ***The court concluded that Title VII requires that criminal record policies "accurately distinguish between applicants that pose an unacceptable level of risk and those that do not.***"[10] In footnotes describing the application of its test, the court distinguished between applicants who pose "minimal level of risk" and those who do not,[11] making clear that an employer cannot reject persons with criminal records on the grounds that the level of risk cannot be brought down to zero.

The El court did not adopt the EEOC Policy Guidance on Convictions as the standard, indicating that it was not entitled to great deference. The court suggested that while the policy

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[9] Id. at 244.

[10] Id. at 245.

[11] Id. at 245 n. 13 & 14.

guidance codified the Green decision, it lacked the thorough and persuasive analysis that entitled it to deference.[12]

Finally, the El court gave some idea of the nature of the analysis that it expects employers to engage in when constructing criminal record policies. SEPTA's policy created seven-year exclusions rather than lifetime bars for many offenses, yet the court articulated concerns about how it was drafted. For instance, it indicated that it would have expected SEPTA to explain how it decided which offenses were in which category, why the seven-year time period had been chosen, and why a crime like simple assault was in the lifetime ban category.[13] Notably, the court had previously indicated that business necessity case law requires "some level of empirical proof that challenged hiring criteria accurately predicted job performance."[14]

The El decision, then, presents several lessons. (1) Employers may refuse to hire some persons with criminal records, despite the racially disparate impact. (2) However, to avoid violating Title VII, they must carefully craft their criminal record exclusionary policies, based on empirical evidence as to whether a person with a criminal record presents more than a minimal risk. In my experience, relatively few employers are crafting criminal record policies with anything approaching this degree of care. To the contrary, absolute bars are more the norm.

This history of the application of Title VII to criminal records raises several implications for the role of the federal government in limiting employers' decisions involving criminal records.

- **EEOC should make enforcement and public education of the Title VII legal standards applicable to criminal records a high priority.** Given the huge number of Americans affected by employers' criminal record policies, this issue should be at the forefront of EEOC's agenda. It fits easily into EEOC's newly announced "E-RACE" initiative, which it describes as "an outreach, education and enforcement campaign to advance the statutory right to a workplace free of race and color discrimination."[15]

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[12] Id. at 244.

[13] Id. at 248.

[14] Id. at 240.

[15] EEOC, "EEOC Takes New Approach to Fighting Racism and Colorism in the 21st Century Workplace" (press release Feb. 28, 2007). According to the press release and its website, the E-RACE initiative will identify issues, criteria and barriers that contribute to race and color discrimination, explore strategies to improve the administrative processing and the litigation of race and color discrimination claims, and enhance public awareness of race and color discrimination in employment. On its webpage explaining the need for the initiative, EEOC cites to disparities caused by employer policies looking at arrest and conviction records. http://www.eeoc.gov/initiatives/e-race/why_e-race.html

- **EEOC should update its policy guidances related to criminal records.** The EEOC should take the El court's criticism of its policy guidances to heart and improve upon them. These guidances were written before criminal background checks became ubiquitous; indeed, they were written before the Civil Rights Act of 1991 revised the Title VII standards for disparate impact cases. They should take into account recent research on the likelihood of reoffending[16] and describe the necessary tailoring of employer policies discussed by the Third Circuit.

- **Congress should enact a law that deals directly with employer consideration of criminal records.** While Title VII currently plays an important role as the only federal law applicable in this context, it is not well-suited to the task. Title VII disparate impact lawsuits are extremely complicated and costly to bring, particularly to adduce statistical proof of disparate impact. Moreover, not all people with criminal records are covered by Title VII. The problem of employer consideration of criminal records is nuanced and widespread enough to merit its own statute, rather than relying on the application of a law of general applicability to race discrimination issues.

- **Congress should direct the U.S. Department of Justice to undertake empirical research helping employers assess risk.** Alternatively, Congress should allocate funding for such research.

- **Congress should not make more criminal record information available to employers without better application and enforcement of suitability criteria.** So long as employers are not being made accountable to have criminal record screening policies that are tailored to the risk for which they are screening, Congress should not permit yet more potentially harmful information to be made publicly available. So, for instance, the Attorney General's recent recommendation for the expansion of the availability of FBI information should be rejected.[17]

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[16] For instance, a recent study found that after six or seven years without reoffending, a person with a criminal record presents little more risk than a non-offender. Megan Kurlychek et al., "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" Criminology and Public Policy, Vol. 5, 1101-22 (July 18, 2006). The authors "believe that [their] research supports explicit time limits in any statutory restrictions on employment."

[17] The Attorney General's Report on Criminal History Background Checks (June 2006) (available at http://www.usdoj.gov/olp/ag_bgchecks_report.pdf), at 59. This recommendation was made despite the fact that FBI records are notoriously unreliable. For instance, a recent report found that of 174 million arrests on file with the FBI, only 45% have dispositions. Craig Winston, "The National Crime Information Center: A Review and Evaluation" at 6 (Aug. 3, 2005).

II. Federal Law Must Require that Criminal Background Reports Be Fair and Accurate

Employers conducting criminal background checks can get them from a variety of sources. Sometimes, employers obtain "rap sheets" directly from public sources, such as the courts or their state's central repository.[18] However, many employers purchase criminal background reports from commercial background screeners, which in turn obtain the information from public sources and prepare reports.

The burgeoning growth of the commercial background screening industry is well documented. A recent report by the National Task Force on the Commercial Sale of Criminal Justice Record Information was the first comprehensive examination of the role of commercial vendors.[19] Although the task force was unable to quantify the number of vendors or the checks they produced, it estimated that there are hundreds, maybe even thousands, of regional and local companies, in addition to several large industry players.[20] Among the latter, the report noted that ChoicePoint conducted around 3.3 million background checks in 2002, most of which included a criminal record check.[21] USIS Transportation Services reported having 30,000 clients and processing more than 14 million reports per year.[22]

The industry's members are "consumer reporting agencies" governed by the Fair Credit Reporting Act (FCRA).[23] Like Title VII, FCRA is a statute of general applicability, and it is more commonly associated with the credit reporting industry than with criminal background checks.

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[18] Indeed, laws that mandate background checks in certain industries frequently require that records be obtained from the central repository, which is often the State Police.

[19] SEARCH, the National Consortium for Justice Information and Statistics, Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information (2005) [hereinafter National Task Force Report on Commercial Sale of Criminal Record Information], at vi.

[20] Id. at 7.

[21] Id.

[22] Id. at 8.

[23] 15 U.S.C. §§ 1681-1681u. See Dalton v. Capital Associated Industries, 257 F.3d 409, 415 (4th Cir. 2001); Poore v. Sterling Testing Systems, Inc., 410 F.Supp.2d 557, 569 (E.D. Ky. 2006); Obabueki v. ChoicePoint, Inc., 145 F.Supp.2d 371, 394-96 (S.D.N.Y. 2001), aff'd, 319 F.3d 87 (2d Cir. 2003). FCRA is enforced by the U.S. Federal Trade Commission (the FTC).

Nevertheless, numerous FCRA rights are implicated when a criminal background report is prepared by a commercial background screener.[24]

Among the duties on commercial background screeners compiling criminal background reports for employers are the following.

- Commercial background screeners may not report arrests or other adverse information (other than convictions of crimes) which are more than seven years old, provided that the report does not concern employment of an individual who has an annual salary that is $75,000 or more.[25] 15 U.S.C. §§ 1681c(a)(5), 1681c(b)(3).

- Commercial background screeners must use "reasonable procedures" to insure "maximum possible accuracy" of the information in the report. 15 U.S.C. §1681e(b). *Note, however, that commercial background screeners are not strictly liable for mistakes in their reports.*

- A commercial background screener reporting public record information for employment purposes which "is likely to have an adverse effect on the consumer's ability to obtain employment" must either notify the person that the public record information is being reported and provide the name and address of the person who is requesting the information or the commercial background screener must maintain strict procedures to insure that the information it reports is complete and up to date. 15 U.S.C. §1681k.

Among the duties that FCRA imposes when an employer uses a criminal background report provided by a commercial background screener for purposes of a hiring decision are the following.

- The employer must provide a clear written notice to the job applicant that it may obtain a consumer report. 15 U.S.C. § 1681b(b)(2). It also must obtain written authorization from the job applicant to get the report. 15 U.S.C. § 1681b(b)(3). Therefore, in situations where a commercial background screener is involved, persons with criminal records ought to be made aware that their criminal record will be scrutinized, which often is not the case when criminal records are obtained directly by the employer from public sources.

- If the employer intends to take adverse action based on the criminal background report, a copy of the report and an FTC Summary of Rights must be provided to the job applicant

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[24] FCRA does not, however, apply to information obtained from public sources of criminal record information, such as the courts or central repositories. National Task Force Report on Commercial Sale of Criminal Record Information, supra note 19, at 58.

[25] For many years, the seven year limit also applied to reporting of convictions. However, this seven year limit was eliminated by Congress in the Consumer Reporting Employment Clarification Act of 1998, P.L. 105-347, Sect. 5.

before the action is taken. 15 U.S.C. § 1681b(b)(3). The obvious reason for this requirement is to permit a job applicant to address the report before an employment decision is made.

- Afterwards, the employer, as a user of a consumer report, must notify the job applicant that an adverse decision was made as a result of the report and must provide, among other things, the name, address and telephone number of the commercial background screener and the right to dispute the accuracy or completeness of the report. 15 U.S.C. § 1681m(a).

Given the volume of people with criminal records whom we represent, CLS regularly sees cases in which the criminal record leading to a client being rejected was generated by a commercial background screener. Despite these companies being covered by FCRA, we have noted many inaccuracies with the reports and other non-compliance with FCRA's requirements by the commercial background screeners and the employers.

1. **Inaccurate reports:** Sometimes, data simply is reported incorrectly, such as when the grade of the offense (felony, misdemeanor, etc.) is wrong.

2. **"Mismatching" of records**: We have seen numerous cases where a criminal record is reported by the commercial background screener that belongs to a different person, of a same or similar name (also sometimes called a "false positive"). This danger is especially present for people with common names and for Hispanic names. Often, the commercial background screener has ignored data indicating that the record did not belong to the subject of the background check, such as a date of birth, middle initial, or suffix (such as "Sr." or "Jr.").

   CLS is preparing FCRA litigation against a commercial background screener which wrongly reported a conviction to our client. Although the person who was convicted had a name match with our client, their dates of birth did not match. Moreover, the screener had also obtained a clear report on our client from the Pennsylvania State Police (the PSP) as well as having looked at court records. The PSP report was more reliable, because its database is searchable by social security number as well as date of birth. Nevertheless, the conviction was reported to my client, who was fired as a result of it.

   In another "mismatching" case, the commercial background screener searched the database of the Administrative Office of Pennsylvania Courts for a client with a common name. It reported 18 different criminal cases against my client – none of which was his. The screener failed to examine the year of birth connected with each case; almost none of the defendants were even born in the same decade as our client! This case illustrates why searches by name only should never be permitted.

3. **"Over-reporting" information:** Sometimes if an employer is not sure about a match, it will report a case in a manner such as the following: "There is a conviction with Mr. X's name on it. This may or may not be your Mr. X." Unfortunately, employers usually assume that

the commercial background screener has done the work for them and rejects the person rather than inquiring further.

4. **Not understanding criminal identity theft:** Criminal identity theft occurs where someone who was arrested used the victim's name and personal identifiers as an alias, resulting in the perpetrator's record being reported as the victim's record. Criminal identity theft is a surprisingly common problem, with the primary criminal justice report examining this phenomenon estimating that 400,000 Americans were victimized in a year's period.[26] However, we have had cases of criminal identity theft where the commercial background screeners refused to correct their reports upon proof being provided.

5. **Not presenting the criminal record information in a way that an employer can understand it:** For instance, the information may be laid out so that several charges connected with one arrest look like they involve multiple incidents.

6. **Maintaining their own databases and not eliminating expunged cases:** Several of the larger commercial background screeners sometimes create their own "shadow databases" from information that they have obtained from public sources. However, when a case has been expunged in the public record, it sometimes remains in the company's database.[27]

7. **Reporting arrests that do not lead to convictions:** As noted above, FCRA allows commercial background screeners to report arrests that have occurred in the last seven years, and the screeners usually supply this information. However, as is true in some other states, Pennsylvania law does not permit arrests to be taken into account when employment decisions are made.[28] Moreover, as noted above, EEOC's Policy Guidance on Arrests also indicates that arrests usually should not be the basis of employment decisions, go so far as to state that "a blanket exclusion of people with arrest records will almost never withstand scrutiny." Thus, commercial background screeners' common practice of reporting arrests serves little purpose beyond inviting employers to make illegal employment decisions.

8. **Lack of employer compliance with their FCRA responsibilities:** If, for instance, employers complied with their obligation to provide job applicants with a copy of their report prior to an adverse employment decision, many of the errors and mis-matches might be worked out. Moreover, even people whose records are reported correctly could have an

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[26] Report of the BJS/SEARCH National Focus Group on Identity Theft Victimization and Criminal Record Repository Operations (Dec. 2005), at 2.

[27] Adam Liptack, Criminal Records Erased by Courts Live to Tell Tales, New York Times, Oct. 17, 2006.

[28] Cisco v. United Parcel Services, Inc., 476 A.2d 1340, 1343 (Pa. Super. 1984).

opportunity to put their best foot forward, to explain why they present minimal risk despite their records. However, in our experience, employers seldom comply with this obligation.

Given these problems with commercial background screeners, the federal government should move to ensure that minimum standards of accuracy and fairness are being enforced in the industry.

- **The FTC should begin an initiative to monitor and regulate the commercial background screening industry and its customers.** To date, the burgeoning industry has faced little to no regulation. On the private enforcement side, fewer than a dozen reported FCRA cases have been brought against commercial background screeners and employers using their products. Given the inaccuracies and other FCRA violations that my organization has seen and the high stakes faced by workers losing their livelihoods as a result of these actions, I urge that FCRA enforcement regarding the commercial background screening industry be made a priority.

- **Congress should enact a law that deals directly with the accuracy and fairness of criminal records.** As in the analogous context of Title VII, it would be better if criminal records were regulated by a statute geared to the issues that they present, rather than being regulated as a FCRA afterthought. A better federal law would:

  * Cover all criminal record reports obtained by employers, whether directly from public sources or from commercial background screeners;[29]

  * Create screening standards for the industry;

  * Establish a higher standard of accuracy than FCRA currently provides;

  * Mandate that for criminal record information to be provided to an employer, at least two of four criteria must match exactly (name, date of birth, social security number or fingerprints);

  * Prohibit the reporting of arrests;

  * Restore the seven year time limit on the reporting of convictions;[30]

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[29] Recognizing a need for uniformity no matter the source of a report, the National Task Force on the Commercial Sale of Criminal Justice Record Information recommended that FCRA apply to all records used by employers and others. National Task Force Report on Commercial Sale of Criminal Record Information, supra note 19, at 72.

[30] See note 25.

* Eliminate FCRA's preemption of stricter state statutes and/or state common law claims.

Alternatively, FCRA could be amended to correct these flaws in existing law as applied to commercial background screeners.

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On behalf of the hundreds of people with criminal records that my organization represents every year, I thank you for the opportunity to testify today.

ATTACHMENT A

Community Legal Services' Representation of Ex-Offenders in Employment Cases

Note that CLS represents only low income Philadelphia residents. Also, our ability to provide representation depends on the merits of a case and the availability of staff.

Cases in which CLS may be able to represent:

- ❑ *An ex-offender is denied a job or fired because of his/her criminal record even though the record is not related to the job and/or is old.* CLS might be able to write a demand letter to the employer, file an EEOC (discrimination) charge, or in extraordinary cases, file a lawsuit.

- ❑ *An ex-offender cannot work in a nursing home, home health care agency, mental health or mental retardation facility, or other facilities covered by the Older Adults Protective Services Act (OAPSA).* In some cases, employers might "over-apply" the law, turning down people with certain convictions who could be employed despite the law. In other cases, there might be an exception to the law, such as when a facility is sold and the person with the record already works there. In such cases, CLS can try to convince the employer that it can and should hire or keep employing the person. But in many cases, the person will not be allowed to work under OAPSA. CLS is working to curtail the law, and we will talk to workers who are affected so we can tell them if and when our efforts are successful and advise them about their options in the meantime.

- ❑ *An ex-offender is denied entrance to a job training program for a profession for which his/her record does not prohibit the person from working.* CLS can try to convince the training program that the person should be admitted.

- ❑ *An ex-offender's occupational license is threatened because of his/her criminal record.* We might be able to represent the person in a licensing hearing.

- ❑ *An ex-offender who is providing child care for a parent is denied a Welfare Department subsidy.* DPW may not have proper grounds for denying the subsidy. We can look into it.

- ❑ *A person who was adjudicated delinquent as a juvenile is having problems with that record.* CLS can determine whether the employment problem is in violation of the law and can advise whether the record might be able to be expunged.

- ❑ *An ex-offender completed Accelerated Rehabilitative Disposition (ARD) in one of the counties, but his/her record has not been expunged.* We can try to help get the expungement if there is no legal assistance for that problem available in the county. In Philadelphia, the Defender Association handles these expungements. We provide assistance in these cases only if employment is affected by the criminal record.

- ❑ *An ex-offender is willing to do the work to try to get a pardon but wants legal advice.* Except for cases involving ARD, almost all convictions can only be erased by a Governor's pardon. The person applying for a pardon must be prepared to do the legwork, such as collecting documents and information and writing answers to the pardon application. But if he/she is committed to the process, CLS may be able to provide advice and, in rare cases, representation at a pardon board hearing. We provide assistance in these cases only if employment is affected by the criminal record.

- ❑ *A person needs expungement of arrests for which he/she was not convicted.* CLS handles such cases in rare circumstances. The Defender Association of Philadelphia provides representation in cases where they represented the person in the criminal case; in other cases, the person can seek assistance from Pre-Trial Services. We would only consider providing assistance if neither of these organizations can help and if employment is affected by the criminal record.

- ❑ *A person who is not an ex-offender has a criminal record that is wrong.* An example would be a case in which the person is a victim of identity theft. CLS can try to help correct the record. We provide assistance in these cases only if employment is affected by the criminal record.

<u>Cases in which CLS usually cannot help or will offer only brief advice</u>:

- ❑ *CLS cannot help ex-offenders find jobs.* We are not an employment agency or job coaches. We do have a resource manual of programs that might be able to help.

- ❑ *CLS will not provide representation in criminal proceedings.* Again, these services are provided by the Defender Association.

People seeking representation by CLS's Employment Unit should begin by coming to our Intake Unit, Monday through Friday, 9:00 a.m. to noon, at 1424 Chestnut Street, Philadelphia. The intake paralegal will screen for eligibility, take information, and collect documents. The new file will then be assigned to the Employment Unit.

For more information about ex-offenders' legal rights, see CLS's website at
http://www.clsphila.org/Ex-Offenders_Information.htm

Prepared, 2/21/03

ATTACHMENT B

Community Legal Services' Legal and Policy Advocacy Assisting Ex-Offenders

Community Legal Services of Philadelphia has developed expertise in the civil (i.e., non-criminal) legal problems faced by ex-offenders. Although CLS does not have an "ex-offender unit," per se, several of our legal units do provide assistance to ex-offenders with civil legal problems caused by their criminal records. Those units include:

- Employment;
- Public benefits;
- Family advocacy (representing parents involved with the Philadelphia Department of Human Services);
- Public housing and Section 8.

Highlights of CLS's systemic advocacy efforts for ex-offenders include the following:

- We have co-counseled litigation under the state constitution challenging the Pennsylvania Older Adults Protective Services Act (OAPSA), which created a lifetime bar preventing most ex-offenders from working in nursing homes, home health care agencies and other long-term care facilities. On December 11, 2001, the Pennsylvania Commonwealth Court ruled in our favor by a five to two vote. Nixon v. Commonwealth of Pennsylvania, 789 A.2d 376 (Pa. Commw. 2001). The State appealed, and on December 30, 2003, the Pennsylvania Supreme Court also ruled in our favor by a six to one vote.

- As a Senior Soros Justice Fellow, CLS Supervising Attorney Amy Hirsch prepared the most in-depth study of the effect of the TANF and food stamps felony drug ban. Amy E. Hirsch, 'Some Days Are Harder Than Hard': Welfare Reform and Women with Drug Convictions in Pennsylvania (Center on Law and Social Policy, December, 1999). Ms. Hirsch has led efforts to educate the Pennsylvania legislature about the harmful effects of the felony drug ban. On December 23, 2003, the Governor signed Act 44 of 2003, which eliminated the ban on cash assistance and food stamps in Pennsylvania.

- In April 2002, CLS joined the Philadelphia Consensus Group on Ex-Offender Reentry and Reintegration, facilitated by Search for Common Ground. This group includes representatives of the prisons, the district attorney, the defender association, the courts, the probation and parole department, service providers, and other stakeholders. The Group analyzed the barriers to prisoner reintegration in Philadelphia and made recommendations for their removal. Its report is available from our website.

- Our Family Advocacy Unit has begun efforts to improve the ability of incarcerated parents to participate in child welfare system proceedings, increase visitation, and improve services, with the goal of strengthening families and avoiding the termination of their parental rights. We are advocating for changes in the Department of Human Services, the Philadelphia Prison System, and the Family Court to improve their systems to better serve incarcerated parents and their children.

- The culmination of our work to date for ex-offenders was the release in May 2002 of Every Door Closed: Barriers Facing Parents With Criminal Records, a joint publication of the Center for Law and Social Policy and CLS, funded by the Charles Stewart Mott Foundation. The report documents the legal challenges that parents released from incarceration will face in successfully caring for their children, finding work, acquiring safe housing, going to school, and accessing public benefits. An "Every Door Closed Action Agenda" series of one- page fact sheets based on recommendations from the report was released in 2003 and has been widely distributed to policymakers across the country. The full report, executive summary, and fact sheets are available on CLASP's website, and can be accessed from a link on CLS's website.

CLS also provides frequent community education sessions for social service staff and participants in welfare-to-work programs, drug and alcohol treatment programs, AIDS education programs, ex-offender groups, the Philadelphia jails, and other settings in which we reach significant numbers of people with criminal records and their advocates.

To learn more about CLS's work for ex-offenders, and to view our reports and community education, see our website at: http://www.clsphila.org/Ex-Offenders_Information.htm.

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Prepared by Community Legal Services, Inc. (9/7/03, updated 10/25/04)